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December 23, 2003

Mrs. Blanca S. Bayó  
Director, Division of the Commission Clerk  
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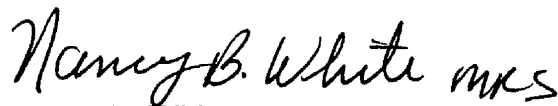
**Re: Docket No. 030851-TP**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc. Response in Opposition to AARP's Petition to Intervene, which we ask that you file in the above captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Nancy B. White

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy White  
519157

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FPSC-01-11-11-11

**CERTIFICATE OF SERVICE  
Docket No. 030851-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery\* and FedEx® this 23<sup>rd</sup> day of December 2003 to the following:

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**(+ )signed Protective Agreement**  
**(\*) via Hand Delivery**  
**(⊗) via FedEx**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Implementation of requirements arising	)	
from Federal Communications Commission	)	Docket No. 030851-TP
triennial UNE review: Local Circuit Switching	)	
for Mass Market Customers.	)	Filed: December 23, 2003
	)	

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**BELLSOUTH TELECOMMUNICATION, INC.'S RESPONSE IN OPPOSITION  
TO AARP's PETITION TO INTERVENE**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Opposition to the AARP's Petition to Intervene requesting that the Florida Public Service Commission ("Commission") deny the AARP's Petition.

In support of this Opposition, BellSouth states as follows:

1. On September 22, 2003, this Commission issued an Order establishing Procedure in this docket, indicating its intent to undertake the fact finding role set forth by the FCC to ascertain whether impairment exists within state and local markets. (Order No. PSC-03-1054-PCO-TP). BellSouth filed its petition to intervene in this docket on October 7, 2003, which request was granted on October 20, 2003. Thereafter, on November 7, 2003, this Commission issued its Second Order on Procedure (Order No. PSC-03-1265-PCO-TP), in which established six issues, with subparts, to be decided in this proceeding.

2. On December 15, 2003, the AARP filed a Petition to Intervene in this proceeding. BellSouth received this Petition to Intervene on December 17, 2003.

3. The AARP does not have standing to intervene in this proceeding. Under Rule 25-22.039, Florida Administrative Code, "persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding office for leave to intervene." To be granted leave, the intervenor must demonstrate that he "is entitled to participate in the proceeding as a matter of constitutional

or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.” Rule 25-22.039, Florida Administrative Code.

4. The AARP cannot meet the requirements of Rule 25-22.039.

5. The AARP does not contend that it has any constitutional or statutory authority that gives it a right to intervene as a matter of law; instead, the AARP contends that “whether the ILEC’s are offering their unbundled network elements to CLECs at a price based on the ILEC’s Total Element Long Run-Incremental Cost (TELRIC) and whether there are impairments to competition in state and local markets resulting from the ILEC’s not doing so, will necessarily affect the substantial interests of all customers of both the ILECs and the CLECs in this state, including the approximately 2.6 million Florida members of the AARP.”

6. The AARP’s alleged “substantial interest” does not comply with the requirements for standing under Florida law. To have substantial interest in the outcome of the proceeding, the AARP must show: (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a 120.57 hearing; and (2) that its substantial injury is of a type or nature which the proceeding is designed to protect. *Agrico Chem. Co. v. Dept. of Env’tl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981); *see also* Order No. PSC-98-0702-FOF-TP; *and* Order No. PSC-00-0421-PAA-TP. The AARP’s unilateral declaration that it “necessarily” will be affected by the outcome of this proceeding fails to meet either test.

7. The AARP’s failure to remotely describe any possible interest in this proceeding is unsurprising, given that here the Commission is simply following the directives of FCC, which directives do not relate to any interests of the AARP. There is not a single issue for determination that the AARP can conceivably address through its participation in this proceeding

and it has not cited to any of the issues established by this Commission in its Petition. To the extent that the AARP is contending that its members are retail customers of either BellSouth or CLECs, such a contention would not establish standing. Neither BellSouth's nor CLECs' retail rates is at issue in this proceeding. Moreover, even if either CLECs or the AARP were to assert that a finding of no impairment in this proceeding could lead to higher retail rates charged to AARP members by CLECs at some unknown time in the future, such conjecture is the type of remote, speculative abstract or indirect injuries that are insufficient to establish standing. *See e.g., In re: Tampa Elec. Co.*, Docket No. 941173-EG, Order No. PSC-95-1346-S-EG, Nov. 1, 1995, 1995 WL 670147 at 2 ; *In re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of New Smyrna Beach Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.*, Docket No. 981042-EM, Order No. PSC-99-0535-FOF-EM, Mar. 22, 1999, 1999 WL 359728 at 22-23.

8. In an analogous case, the Telecommunications Resellers Association ("TRA") filed a Motion for Leave to Intervene in an application seeking authority to transfer control of certain Sprint subsidiaries to MCI WorldCom. In rejecting the TRA's motion, this Commission found that it had not demonstrated that its substantial interests would be affected. Notably, this Commission stated, "TRA seems to argue that we should retain the status quo so that its members do not lose a provider of network services. We do not believe that the 'loss' of a competitor in the market, in itself, demonstrates harm to TRA." Order No. PSC-00-0421-PAA-TP, *In re: Joint Application of MCI WorldCom, Inc. and Sprint Corporation for Acknowledgment or Approval of Merger*, Docket No. 991799-TP. Likewise, this Commission found "TRA's speculation as to the effect that the merger of MCI WorldCom and Sprint will have on the

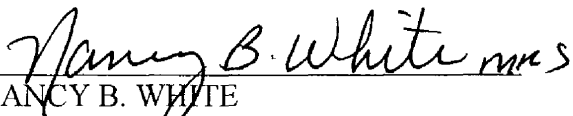


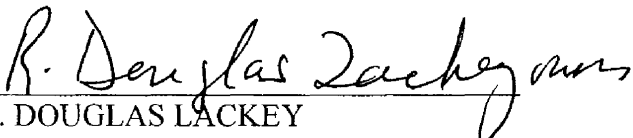
competitive market amounts to conjecture about future economic detriment. Such conjecture is too remote to establish standing.” *Id.*

For the foregoing reasons, BellSouth requests that the Commission enter an Order dismissing the AARP’s Petition to Intervene.

Respectfully submitted this 23<sup>rd</sup> day of December, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
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